



Kentucky Law Journal

Volume 45 | Issue 2

Article 3

1956

Prison vs. Closed Ward: Their Philosophical Relationship

Otto E. Guttentag
University of California

Follow this and additional works at: <https://uknowledge.uky.edu/klj>



Part of the [Law Enforcement and Corrections Commons](#)

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Guttentag, Otto E. (1956) "Prison vs. Closed Ward: Their Philosophical Relationship," *Kentucky Law Journal*: Vol. 45 : Iss. 2 , Article 3.
Available at: <https://uknowledge.uky.edu/klj/vol45/iss2/3>

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

Prison vs. Closed Ward

Their Philosophical Relationship*

By OTTO E. GUTTENTAG, M.D.**

THE RELATIONSHIP of the closed ward as a place of commitment for an accused, on the one hand, and prison and hell on the other, is an important topic of discussion. It epitomizes the difference between veterinary or botanical medicine and human medicine—between the physician as veterinarian or tree surgeon and the physician as a physician for human beings. All three—closed ward, prison, and hell—have close relation to modes of biological existence, namely, being sick, being a criminal, and being a sinner. However, only the attribute of being sick is ascribed to all creatures—being a criminal or a sinner is reserved exclusively for human beings.

Today we shall restrict our discussion to the problem of the closed ward vs. prison. First of all, hell or purgatory, as a place of commitment for the atonement of sin, i.e., of betraying one's own convictions, of being a heel as it were, is—for better or for worse—no longer looked upon by many as an institution outside the room of our own hearts. Second, and most important however, recent developments in the fields of psychology and psychopathology have raised problems in the relationship of the closed ward and prison which need clarification.

Let me elucidate. Enormous advances in these fields during the past 50 years have demonstrated the impact of man's general biological, i.e., impersonal and unconscious, characteristics upon

* The following two papers are part of a symposium held at a Grand Rounds Conference on May 16, 1956, at the University of California School of Medicine, San Francisco, arranged by the sub-department of Homeopathy and sponsored by the Homeopathic Foundation of California. The other two participants were Doctor Karl M. Bowman, Head of the Department of Psychiatry, who spoke on "Psychiatric Testing of Mental Freedom" and Mr. Thomas C. Lynch, District Attorney of the City and County of San Francisco, who spoke on "Forced to Decide."

** Associate professor of Homeopathy, University of California School of Medicine.

his conscious reasoning and acting. These advances have deeply influenced our attitude toward the anti-social behavior of our fellow humans. An ever widening range of anti-social acts which menace society has been found to be due to mental disorder and an ever widening range of mental disorder has been found to be the source of such anti-social acts. In jurisprudence, this attitude culminated in the now famous 1954 Durham decision of the Court of Appeals in the District of Columbia. This decision reads, in part, as follows: "The rule we now hold . . . is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."¹

Here, it seems, the issue becomes clouded, for the general biological characteristics—mental disease and mental defect—are obviously inadequate concepts to determine criminal responsibility. Their acceptance as basic standards of reference for such determination does not offer any protection against criminal trials for animals, and I believe everyone agrees that healthy animals never commit crimes although they may commit anti-social acts. Jurisprudence is not a branch of biology.

We may gain an insight into the problem with which we are dealing here if we recall that it might be you and I who are relegated to either prison or closed ward, and it may be you and I who make the decision to commit someone to one or the other.

From the standpoint of the criminal act as an anti-social act, it makes no difference to which of the two institutions we go or to which of the two institutions we send the accused. Both the closed ward and prison protect society equally well. Establishment of two types of places of containment appears to be a needless duplication.

But what about the jurisprudence which realizes that the accused is a human being and that the jurors are human beings, in other words, creatures who are aware of their I-ness, yet prone to the frailty of all flesh as you and I are. Such jurisprudence is characterized by two facts.

First: Even though it is insistent upon its rights in general, such jurisprudence restrains itself threefold, namely, in relation to what is called "insanity," in relation to children, and of course, in relation to animals. The question arises, therefore, as to what do

¹ *Durham v. U.S.*, 1, 214 F.2d 862, 875 (D.C. Cir. 1954).

children and the so-called insane, have in common with animals in relation to law? The answer is that we do not attribute to these three biological groups a range of reflection: of looking at one's self, of responsibility and judicability, of answering and judging one's self what one has made of one's self,² of conscience, of knowing with one's self, in other words, that experience of independence, the "*mental freedom*" which we attribute to ourselves as "sane" adult humans.

Secondly, such jurisprudence is aware that although no one can say where the final limits of human power lie³ and, intent as we are on giving meaning to our lives, the darkness of fate is impenetrable and every meaning we give to our lives and very existence lacks an ultimate necessity. Our freedom is finite.⁴

It is at this juncture that the difference between the human anti-social act which menaces society committed by the so-called insane and children, and the anti-social act due to criminal intent becomes apparent. The anti-social act of the insane or child results from absence or lack of development of mental freedom. Consequently, the transgressor becomes the object of concern of his fellow man. The anti-social act of the criminal results from the full possession of his "finite freedom." The criminal disagrees with a particular answer which his fellow humans have given to some problem of interhuman relationship. In consequence, the transgression becomes a primary object of concern of his fellow man.

Does the separation of closed ward and prison exemplify this difference? Indeed it does! Confinement in a closed ward is indefinite and not previously determined by law; for the length of treatment required to restore mental freedom in a given individual cannot be predetermined. Incarceration in a prison is definite and can be previously determined by law; for the act of transgression itself is a definite event, and can be expressed in terms of length and strength of enforced isolation, even if the act never becomes a reality. In the closed ward, the patient remains a fellow creature and in him, man's potentialities are respected,

² Tillich, Paul, *The Courage To Be*, New Haven, Yale University Press, 1952, p. 51.

³ Tillich, Paul, *Love, Power, and Justice, Ontological Analyses And Ethical Applications*, New York and London, Oxford University Press, 1954, p. 78.

⁴ Ibid., p. 52.

but he is adjudged sick. In prison, the prisoner remains a fellow man, and in him man's freedom is respected, but his fellow humans disagree with a particular act of his. The prisoner does not cease to be my alter ego, even though *magis amicus lex*.

In general then, both the prison and the closed ward are necessary. It is as brutal to put a healthy man into a closed ward, as it is brutal to put a sick man into a prison—the healthy man in full possession of his “finite freedom,” and the sick man in limited possession of it.

In principle, every legally accused person deserves as much psychiatric as legal evaluation. A scale of compulsory psychiatric treatment is desirable similar to that of the scale of legal restriction of physical freedom.

In the overwhelming majority of anti-social acts, the single act will be a mixture of the accused person's limitations of freedom due to sickness as well as to his opposing answer to the problem of leading a meaningful life. The alternative is new with each accused. *Fiat justitia*.